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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/635,350 | 08/06/2003 | Debra L. Koptish | DLK-101A | 8897 |

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 05/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/635,350

Applicant(s)

KOPLISH, DEBRA L.

Examiner

Steven L. Weinstein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 8/6/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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Claims 1-20 are rejected under 35 USC 112, first paragraph as being based on a non-enabling disclosure. The claims recite, and the specification discloses a “non-vertical top.” It is not understood what this phrase means. A top of an object is its upper end. What does the term “vertical” have to do with this concept of an upper end?

Claims 1-20 are rejected under 35 USC 112, second paragraph as being indefinite. As noted above, the phrase “non-vertical top” is not understood and is thus indefinite.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 15, 16, and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Good Housekeeping Complete Book of Cake Decorating (1961) as further evidenced by Step-by- Step, 50 Children’s Party Cakes (Maggs 1994), Wilton 1994 Yearbook, Wilton 1996 Yearbook, Wilton 1997 Yearbook, Birthday Cakes (Coward et al 1994), further in view of Disney’s Family Cookbook (Cook, 5/2/96) and Stewart et al (6,652,897).

In regard to claim 1, Good Housekeeping Complete Book of Cake Decorating (hereinafter called Good Housekeeping) as evidenced by Step by Step, the Wilton Yearbooks 1994, 1996 and 1997 and Birthday Cakes, evidence the fact that it was notoriously conventional in the art to provide three dimensional cake sculptures having dozens, if not hundreds, of distinguishable scenes. For example, and specifically in regard to claim 1, Good Housekeeping provides an edible baked base (such as the House p. 49) having a bottom, vertical side walls and a top with a portion of the sculpture being three dimensional and being located on the top (e.g.,

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the icing) and another portion that makes up the sculpture that is located on the substantially vertical walls and is two dimensional (the wafers and the frosting). Since it is not clear what “a non-vertical top” is, the rejection is not made under 35 USC 102, anticipation. In any case, as noted above, the art taken as a whole teaches all types of distinguishable scenes having all types of shapes wherein the base cake is either molded during baking to impart the desired shape for the distinguishable scene or is molded during baking and then further formed by mechanical operations to impart the desired shape. Thus, whether the walls of the baked product are vertical or not and whether the top is non-vertical or not (whatever that means) is seen to have been an obvious matter of design and an obvious function of the distinguishable scene one desires to simulate and how accurate a representation of the scene one desires to achieve. Also, as for the three-dimensional versus two-dimensional portions of the sculpture, and what portion of the baked product they are associated with, this, too, is seen to have been an obvious matter of choice and design and is also an obvious function of the degree of realism one desires to impart to the simulation. Good Housekeeping, and the art taken as a whole, teach portions of the sculpture with various portions which help simulate the overall distinguishable scene. Disneys Family Cookbook is relied on as further evidence of the notoriously conventional concept of employing products to make simulations of recognizable three dimensional shapes, Stewart et al is relied on as further evidence of employing two dimensional cake decorations. In regard to claim 2, it would have been obvious to modify Good Housekeeping as further evidenced by the secondary art and employ an edible substrate with pintable material in view of Stewart (6652897) who teaches edible substrates with printed decorations are conventional. In regard to claim 3, Good Housekeeping, and the art taken as whole, teaches it is, of course, well established

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to employ cookies, candy, and icing to help create a simulation. In regard to claim 4, the particular simulation one chooses to create is unequivocally an obvious matter of choice and design. Note, e.g., the stylized frog on the cover of the step-by-step book. Note, too, the simulated, stylized frog has three dimensional simulative decorations on top and two dimensional simulative decorations on a vertical wall. In regard to claims 5 and 6, where the simulations are positional are also seen to have an obvious matter of choice and designed an obvious function of the simulation to be made and the degree of reality US. Stylized design one chooses to create. In regard to claim 15, which recites the method, as noted above, it is well established to employ a mold of the appropriate, desired shape to impart the shape to the baked product to be decorated or cut or carve the molded product after cooling. In regard to claim 18, the use of icing to apply decorative, edible simulations such as cookies is notoriously conventional as taught, for example, by Good Housekeeping. See e.g., the Good Housekeeping house on page 49- "with frosting, fasten about 20 oblong tea cookies in place as roof tiles".

Claims 8-14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Jamin (3,821,423).

In regard to claims 8 and 9, Stewart discloses printed matter attached to an inedible peelable backing for use in decorating cakes. Also, the art taken as a whole disclose it was well established to employ either edible or inedible decorations in a simulation. For example, the house (p. 49) in Good Housekeeping uses cookies as roof tiles, candy cigarettes as part of the roof, sugar wafers for shutters, and cotton for smoke. Jamin can be relied on as further evidence of employing inedible material to decorate a food and provide an edible simulation. To employ inedible decorative features as part of a simulation is therefore seen to have been obvious and

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only an obvious function of only whether one chooses to have inedible elements associated with an otherwise edible product.

The remainder of the references are cited as art of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L Weinstein whose telephone number is (571) 272-1410.

The examiner can normally be reached on Monday-Friday 6:30am to 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S. Weinstein/af
May 18, 2005

Steven Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761